

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-cr-00020-FDW**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	ORDER REGARDING
)	THIRD-PARTY PETITION
(1) PEDRO OSCAR DIEGUEZ,)	
)	
Defendant.)	
)	
<hr/> PETITION OF JAMES MATTHEW)	
MUNDAY)	
<hr/>)	

THIS MATTER is before the Court on the Government’s response to the letter submitted pro se by James Matthew Munday, filed on July 15, 2014, (Doc. 141), which claims an interest in one handgun listed in the Preliminary Order of Forfeiture filed February 25, 2014 (Doc. 121). This letter is, in substance, a third-party petition although not signed under penalty of perjury or otherwise in compliance with 21 U.S.C. § 853(n)(3). The Government has requested that the Court treat it as a properly-filed petition and, in effect, has independently verified the truth of the facts asserted by Mr. Munday (“petitioner”). The Court, therefore, deems Petitioner’s letter to be a timely petition for purposes of Fed. R. Crim. P. 32.2(c).

The Government has determined and represented to the Court that the Hi-Point JHP45 .45 caliber pistol claimed by Petitioner was lawfully purchased by Petitioner in 2007 and reported stolen by Petitioner in 2010. It was seized in connection with the investigation of this case on January 17, 2013.

According to the Government's response, publication of internet notice to all third parties began on June 27, 2014, providing notice that any petition must be filed within sixty (60) days of that date. Although the sixty (60) day period has not yet fully run, no person other than Petitioner has asserted a claim to this pistol. The Government further represents that it is not aware of any other potential claimants to this asset.


In light of these facts, the Government requested an order directing that the pistol be returned to Mr. Munday as the true owner, subject to the condition that no other third-party petitions claiming an interest in this asset are filed by the deadline given in the internet notice, which is August 26, 2014. Accordingly, the Court finds that:

1. The pistol in question should be returned to the true owner as soon as reasonably possible after the deadline has run for any other third-party petitions related to this asset.
2. The Government's legal position and actions in this matter are reasonable under the circumstances.

IT IS THEREFORE ORDERED:

1. If no other third-party petitions related to the following asset are filed by August 26, 2014, the government shall return the asset to James Matthew Munday within a reasonable time thereafter: **One Hi-Point JHP45 .45 caliber pistol, serial number X457816.**
2. Each party to this ancillary proceeding shall bear its own costs, including any attorney fees.

SO ORDERED.


Frank D. Whitney
Chief United States District Judge

